(1)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No 2839 of 2005

In the matter of Article 19 & 21 of The Constitution of India

and

In the matter of Article 41,46 & 48 of The Constitution of India

and

In the matter of *Indira Gandhi Agricultural University Affiliation Recognition of Colleges and Institutions Regulations 2001*

and

In the matter of *Indira Gandhi Krishi Vishwavidyalya Adhiniyam 1987*

and

In the matter of: -

Petitioner : Nandgaon Shiksha Mandal
A registered society through
its President Shri A.B. Dubey
S/o Late S.P. Dubey, aged
about 79 years
C/o Vidhi Mahavidyalya
G.E. Road, Rajnandgaon (C.G.)

शपथ आयुक्त
बिलासपुर तहसील कोर्ट
बिलासपुर (छ.ग.)

Versus

Respondents : (1) Indira Gandhi Krishi
Vishwavidyalya, though Registrar
Krishak Nagar, Raipur (C.G.)

P.R. No. 2995/05
Presented by Shri Rajesh Yadav
dated

(2) Board of Management
Through Secretary,
Indira Gandhi Krishi
Vishwavidyalya,
Krishak Nagar, Raipur (C.G.)

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THAKUR VIJAY SINGH
Solicitor General of India
CHHATTISGARH HIGH COURT
High Court Campus, Bilaspur (C.G.)

(2)

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(3) Academic Council
Through Secretary,
Indira Gandhi Krishi
Vishwavidyalaya, Krishak Nagar,
Raipur (C.G.)

(4) The State of Chhattisgarh
Through Secretary department of
Agriculture, D.K.S. Bhawan
Mantralya Raipur (C.G.)

(5) Indian Council of Agricultural
Research, Through Secretary
Krishi Bhawan, Dr. Rajendra
Prasad Road, New Delhi.

(6) Union of India through Secretary
Department of Agriculture
Research & Education, Krishi
Bhawan Dr. Rajendra Prasad
Road, New. Delhi.

शपथ आयुक्त
एम.के. शुक्ला
बिलासपुर तहसील कोर्ट

Before : Hon'ble the Chief Justice and his companion Judges of the Hon'ble High Court of Judicature Chhattisgarh at Bilaspur

Petition under Article 226/227 of the Constitution of India for issuance of suitable directions, orders or writs including writs in the nature of Mandamus, Certiorari etc.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri D.R. Deshmukh, J.

WRIT PETITION NO.2839 OF 2005

Nandgaon Shiksha Mandal

Versus

Indira Gandhi Krishi Vishwavidyalaya and Others

Present: Mr. Neelabh Dubey, Advocate for the petitioner.

Mr. Prashant Mishra, Sr. Advocate with Mr. B.D. Guru, Advocate for respondents 1 to 3.

Mr. Sumesh Bajaj, Dy. Govt. Advocate for respondent No.4/ State of Chhattisgarh

Mr. Bhishma Kinger, Advocate for respondents 5 and 6.

ORDER
(Passed on 20th of September, 2005)

The following oral Order of the Court was passed by A.K. Patnaik, CJ: -

The petitioner–society was granted permission by the Vice-Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Raipur to offer Bachelor of Science in Agriculture Programme at Rajnandgaon to the students admitted for the said purpose by notification dated 19.12.2002. During the academic year 2002-03 and 2003-04, the college opened by the petitioner-society could not get started as the requisite number of students did not come for admission. The petitioner has stated in the writ petition that this was because another college namely Shri Ram College of Agriculture at Rajnandgaon offered the same course of Bachelor of Science in Agriculture. In view of the aforesaid difficulties faced by the petitioner-

society, permission was sought from the Indira Gandhi Krishi Vishwavidyalaya by the petitioner-society to open the college and offer the aforesaid course in Bachelor of Science in Agriculture at Tehsil town of Chowki which was about 41 kilometers from Rajnandgaon. By notification dated 05.07.2004, the Vice-Chancellor of the Indira Gandhi Krishi Vishwavidyalaya granted the said permission to the petitioner to establish the College of Agriculture in Tehsil Chowki, district Rajnandgaon. Pursuant to the said permission, the petitioner-society hired a building on rent at Chowki, recruited staff and started admissions. By a subsequent order No.6661 issued on 11.08.2004, the petitioner-society was informed that the permission for shifting the college from Rajnandgaon to Chowki has been cancelled by the Board of Management, Indira Gandhi Krishi Vishwavidyalaya. The petitioner-society moved this court and by an order dated 31.08.2004, the Court directed that the petitioner will make a detailed representation to the Indira Gandhi Krishi Vishwavidyalaya and the said University will give an opportunity of hearing and thereafter pass a final order after taking into consideration all points including the future of the students who had been admitted in the college of the petitioner-society. Pursuant to the said order dated 31.08.2004 passed by this Court, the petitioner-society submitted a representation to the University authorities. The aforesaid University issued an order dated 07.01.2005 granting affiliation to the college of the petitioner-society at Chowki in district Rajnandgaon and stated in the said order dated 07.01.2005 that the College of the Agriculture of the petitioner-society had been recognized for the academic session 2004-05 by the Indira Gandhi Krishi Vishwavidyalaya. Simultaneously, however, the petitioner-society received a notification dated 03.01.2005 issued by the Registrar of the Indira Gandhi Krishi Vishwavidyalaya that the affiliated/recognized private colleges of the

University shall not enroll the students for the academic year 2005-06. A copy of the said notification dated 03.01.2005 has been annexed to the petition as Annexure P/9. Aggrieved by the said notification dated 03.01.2005 in Annexure P/9, the petitioner-society has filed this writ petition under Article 226/227 of the Constitution of India praying inter alia for quashing the said notification dated 03.01.2005 in Annexure P/9.

2. On 06.07.2005 the Court issued notices in the writ petition as well as in M.W.P.No.2364/2005 for interim orders to the respondents. On 25.07.2005 Mr. Prashant Mishra, learned counsel appearing for respondents 1, 2 & 3 submitted that a meeting of the Board of Management is likely to review the decisions impugned in this writ petition in Annexure P/9 on 30.07.2005. Thereafter, however, a return was filed on behalf of respondents 1, 2 & 3 and alongwith said return a copy of the notification dated 04.08.2005 of the Indira Gandhi Krishi Vishwavidyalaya, Raipur was annexed as R/9. In the said notification, the decision of the Board of Management in its 56th meeting held on 30.07.2005 relating to inter alia admissions in affiliated and recognized private colleges for the academic year 2005-06 were mentioned. A reading of the said notification dated 04.08.2005 would show that the Board of Management of the Indira Gandhi Krishi Vishwavidyalaya had categorized the colleges into three Categories. Under Category-1, six colleges which had been permitted for admitting the students in current academic session 2005-06 were mentioned. Under Category-02, eight colleges which had been permitted conditionally for admitting the students in current academic session 2005-06 were mentioned and under Category-3, two colleges which had not been permitted for admitting the students in current academic session 2005-06 were mentioned. In Category-3, the College of Agriculture established by

the petitioner-society at Chowki was included and hence the decision of the Board of Management of the Indira Gandhi Krishi Vishwavidyalaya in its said meeting on 30.07.2005 on Category-3 colleges are relevant for the purpose of disposal of the writ petition and is quoted hereunder:

> "The following Colleges have not been permitted for admitting students in current Academic Session i.e. 2005-06 as the same have been placed under Category No.3 which means the facilities created by these colleges are less than that of Category-02 above.
>
> 1. College of Agriculture, Raigarh.
> 2. College of Agriculture, Chowky, Rajnandgaon
>
> (The Board of Management observed that these two Colleges should create the minimum facilities as per norms within a year specially as towards its own building, faculty (teachers), 50 acres of its own land, furnishing the complete laboratory facilities etc. and also other stipulated facilities requiring for grant of affiliation. The Board of Management did not agree to give them permission to admit students in current academic session as these colleges have failed to create the minimum facilities required for maintaining standard of education and also for imparting quality education so that the injustice is not done with the students. If these two Colleges meet the minimum facilities required as stipulated for affiliation, will be considered by Board of Management in next year after an inspection)."

It will be clear from the decision of the Board of Management of the Indira Gandhi Krishi Vishwavidyalaya quoted above that the Board of Management decided not to permit the College of Agriculture at Chowki in district Rajnandgaon established by the petitioner-society to admit the students for the current academic session 2005-06 as it did not meet the minimum facilities required for affiliation.

3. In the course of hearing of the writ petition on 05.09.2005, Mr. Prashant Mishra, learned counsel for respondents 1, 2 & 3 submitted before the Court that in case the petitioner makes a representation to the Registrar of the University, the said representation will be considered by the University authorities and a decision will be taken within a short time whether to allow the affiliation of the petitioner and the Court passed an order on 05.09.2005 that the petitioner will submit a representation to the Registrar of the University by 07.09.2005 and the competent authority of the University will take a decision by 13.09.2005. Pursuant to the said order dated 05.09.2005, the petitioner made a representation and the Board of Management of the Indira Gandhi Krishi Vishwavidyalaya considered the said representation and took a decision in its 57th meeting held on 13.09.2005. The decision of the Board of Management has been notified in the notification dated 13.09.2005 annexed to the application for taking documents on record filed by respondent No.1, 2 & 3 I.A.No.8032/2005 relevant portion of which is quoted herein below :

> "On perusal of the representation, the Board of Management observed that the petitioner prayed for following:
>
> 1. Granting Affiliation with IGKV.
> 2. Permission to enroll the students for academic year 2005-06.
>
> The Board of Management made it clear that its earlier decision notified vide the notification No. M/BM-56/2005/5539 dated 4.8.2005 is not affecting the status of existing affiliation of petitioner with the IGKV. All the 17 private colleges including the petitioner enjoy the affiliation as on date but it is under review. The case of chowki college has been considered in comparison to other category-2 colleges to evaluate whether both the cases are at par or not. It appears that the category 2 colleges have better infrastructure facilities than the chowki college. As far as

enrolling students to current session, it is to be stated that it has been stopped due to quality concerns of education to students keeping in view lack of physical facilities, quality of teaching, trained faculty and teaching/learning atmosphere in the college. The petitioner himself admitted about the poor facilities available in the college and also expressed difficulties to create infrastructure facilities vide his Sl.No.12 of the representation which reads as under:

"That creation of infrastructure facilities in chowki is difficult because it is a notified tribal area where non-tribal can not buy property. Level of development in the region is nil".

After going through the pros and cons of the instant matter, the Board of Management has resolved that the petitioner (Nandgaon Shikshan Mandal, Rajnandgaon) retains its present status of affiliation with IGKV and the notification made by the university is not affecting the affiliation by any way. The admission of students during the session 2005-06 was however not agreed keeping in view the quality concerns and future of the students. It is further stated that the permission granted to 8 colleges categorized as '2' is purely conditional subject to fulfillment of requirement within a period of six months from the date of notification."

It will be clear from the aforesaid decision of the Board of Management of the Indira Gandhi Krishi Vishwavidyalaya that while the affiliation of the petitioner-society has been retained, admission of the students during the session 2005-06 has not been permitted by the Board of Management in view of a statement made by the petitioner-society in its representation that creation of infrastructure facilities in Chowki is difficult because it is a notified tribal area where non-tribal can not buy property and the level of development in the region is nil.

4. On 16.09.2005 when this case was taken up for hearing again, we wanted to know from learned counsel for the parties as to whether there were some restrictions on transfer of properties in Chowki Tehsil under the law, on account of which the petitioner has made a statement in the representation that a non-tribal cannot buy property in a notified tribal area. Mr. Prashant Mishra, learned counsel appearing for respondents 1, 2 & 3 has brought to our notice the provisions of sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959 as well as the Notification issued thereunder by the State Government No.F-5-3-76—384-VII-N-1, dated 21.2.1977 (for short "Notification").

5. Sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959 is quoted hereunder:

> "(6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall---
>
> (i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;
>
> (ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing."

It will be clear from a plain reading of sub-section (6) (i) of Section 165 of the M.P. Land Revenue Code, 1959 which is applicable to the State of Chhattisgarh that in such areas as are predominately inhabited by aboriginal tribes and from such dates as the State Government may, by notification, specify the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification, cannot be transferred and is not transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification. A reading of the notification, however, shows that the State Government has declared only Rajnandgaon Tehsil in district Rajnandgaon as the area predominately inhabited by aboriginal tribes and as specified in the notification dated 26th January as the date from which the right of a Bhumiswami belonging to a tribe declared to be aboriginal tribe by the State Government, cannot be transferred and was not transferable either by way of sale or otherwise to a person not belonging to such tribe in the area specified in the notification. Since Tehsil Chowki has not been declared as an area under sub-section (6)(i) of Section 165 of the M.P. Land Revenue Code, 1959, the right of a Bhumiswami belonging to a tribe declared as an aboriginal tribe in Tehsil Chowki, appears to us to be transferable by way of sale or otherwise to a person belonging to such an aboriginal tribe in the area.

6. Sub-section (6) (ii) of Section 165 of the M.P. Land Revenue Code, 1959, however, provides that in areas other than those specified in the notification under sub-section (6) (i) of Section 165, the right of a Bhumiswami belonging to a tribe declared to be an aboriginal tribe by the State Government cannot be transferred or transferable either by way of

sale or otherwise to a person not belonging to such a tribe "without the permission of a Revenue Officer not below the rank of the Collector given for reasons to be recorded in writing". Thus in Tehsil Chowki which is an area other than those specified in the notification, the transfer of a right of a Bhumiswami belonging to an aboriginal tribe to a person not belonging to such a tribe is not absolutely prohibited but such transfer by way of sale or otherwise can be made only with the permission of the Revenue Officer not below the rank of the Collector given for the reasons to be recorded in writing. The petitioner-society,, therefore, can acquire the rights of Bhumiswami belonging to a tribe in Chowki Tehsil with the permission of a Revenue Officer not below the rank of the Collector given for reasons to be recorded in writing for the purpose of establishing the required infrastructure facilities for the college. Such acquisition, however, will require more time than a normal acquisition of land because permission of a Revenue Officer not below the rank of the Collector has to be applied for and has to be considered in terms of sub-section (6) (ii) of Section 165 of the M.P. Land Revenue Code, 1959. It is quite likely that such acquisition may not be possible within six months but may be possible within a year from today. It is clear from the decision of the Board of Management of the Indira Gandhi Krishi Vishwavidyalaya taken in its 56th meeting held on 30.07.2005 and the decision taken in its 57th meeting held on 13.09.2005 that the permission has been granted to eight colleges categorized under Category-2 conditionally subject to fulfillment of the requirements within a period of six months from the date of the notification. Considering the fact that a period of one year may be required for the petitioner-society to acquire the land for the purpose of creation of infrastructure facilities in Tehsil Chowki with the permission of the competent authority in terms of sub-section (6) (ii) of Section 165 of the M.P. Land Revenue Code, 1959, we are of the view that

similar conditional permission if not granted to the petitioner-society to admit the students during the session 2005-06 subject to fulfillment of the requirements of infrastructure facilities for the purpose of affiliation within a period of one year from the date of such permission would affect the right to equality guaranteed to the petitioner under Article 14 of the Constitution.

7. In the result, we dispose of this writ petition with a direction that the Board of Management will grant conditional permission to the petitioner-society in the same manner as it has granted to eight colleges categorized under Categoty-2 for admitting the students during the session 2005-06 subject to fulfillment of the requirements within a period of one year from the date of such permission. Considering the fact that the petitioner-society was prevented all this while from admitting the students for the academic session 2005-06 and the normal period for such admission will be over by 30.09.2005, the University authorities will grant reasonable time beyond 30.09.2005 to the petitioner for admitting the students for the academic session 2005-06.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subbu